No. 86-1082

(2)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Petitioner,

v.

LARRY WOLLERSHEIM,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California Second Appellate District

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BRIEF IN OPPOSITION

Of Counsel:

GEORGE H. COHEN
ROBERT M. WEINBERG
JULIA PENNY CLARK
BREDHOFF & KAISER
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

MICHAEL L. GOLDBERG
Counsel of Record
CHARLES B. O'REILLY
GREENE, O'REILLY, BROILLET,
PAUL, SIMON, MCMILLAN,
WHEELER & ROSENBERG
1000 Connecticut Ave., N.W.
Suite 1205
Washington, D.C. 20036
(202) 293-0172
Counsel for Respondent

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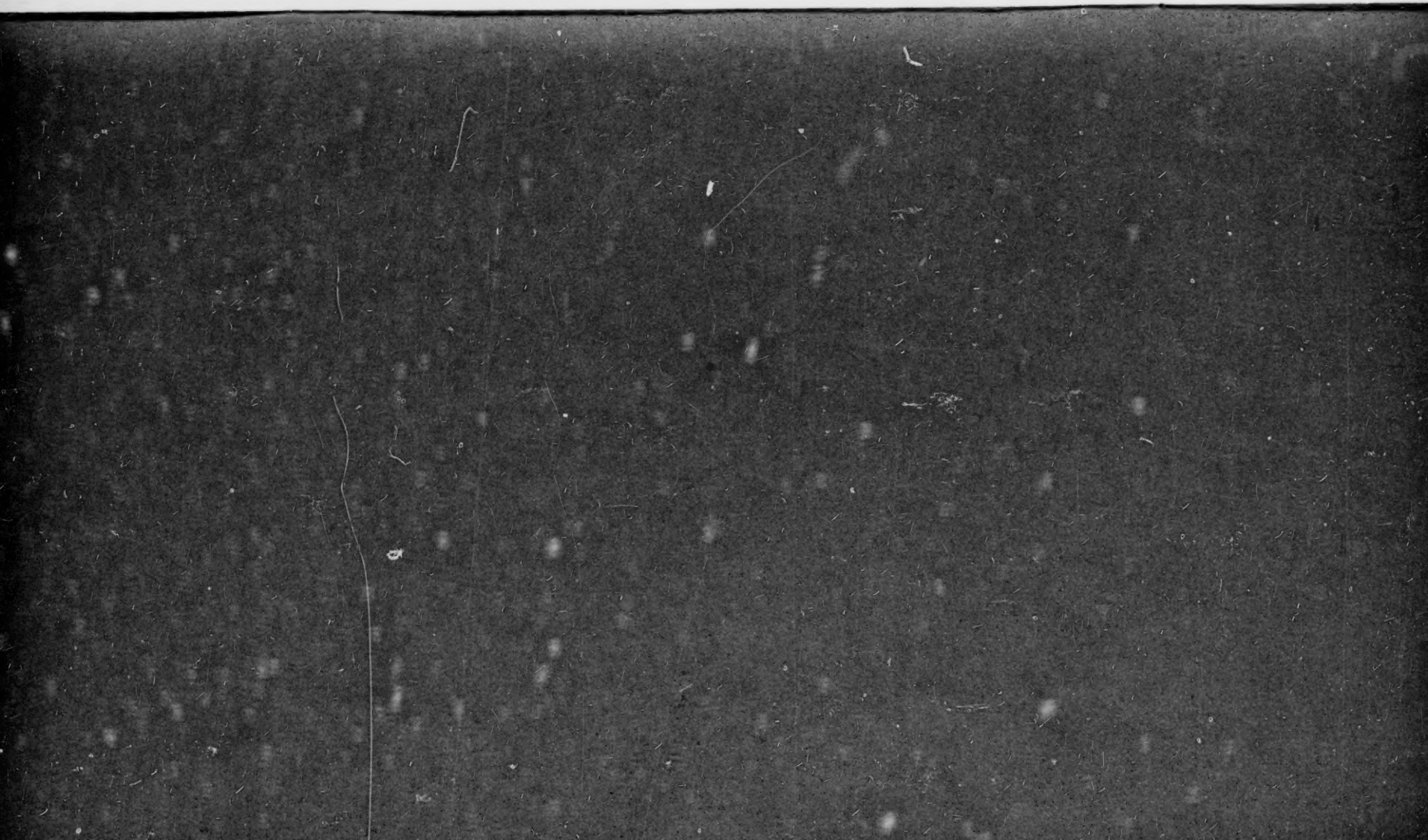

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BRIEF IN OPPOSITION

For the reasons stated herein the petition for a writ of certiorari should be denied. The California Court's order, to which the petition is now directed, denied petitioner's request for a discretionary unsecured stay of execution of judgment pending resolution of its appeal. The denial was a proper exercise of the court's discretion and did not deprive petitioner of any constitutional right nor decide the constitutional issue that petitioner asserts as the basis for certiorari review herein.

STATEMENT OF CASE

On October 1, 1986, the Second Appellate District of the Court of Appeal for the State of California (hereinafter Court of Appeal), in an exercise of its discretion-

ary powers, denied petitioner's request for an unsecured stay of execution pending resolution of its appeal from a money judgment entered on July 22, 1986, in the Superior Court for the State of California, County of Los Angeles (hereinafter referred to as the Superior Court). Petitioner claims that this discretionary denial of an unsecured stay deprived petitioner of its right to a meaningful appeal in violation of due process of law and affects the religious practices of its members.

On September 29th, petitioners invoked the appellate jurisdiction by filing a notice of appeal from the judgment, and at that time also applied for an unsecured stay of execution pending resolution of its appeal.[1] (Petition for Writ of Supersedeas or Other Appropriate Stay Order, hereinafter referred to as "request for stay".)

Therein petitioner argued that the judgment would be reversed by its appeal and that without a stay order it would be rendered bankrupt before its contentions on appeal were considered. Petitioner also stated that the judgment, unless stayed, violated the "religious freedom" rights of its alleged members.

Respondent opposed the request for a stay as the matters of record were contrary to petitioner's claims. The matters of record disclosed that there was no merit to the appeal, that there was no prejudice or harm to petitioner and that there was substantial risk of prejudice to respondent. (Response to Request for Immediate Stay and Petition For Writ of Supersedeas, filed October 1, 1986.)

On October 1, 1986, the Court of Appeal exercised its discretion and denied the request for stay.

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[1] Petitioner requested in the alternative that the statutory undertaking for an automatic stay on appeal be reduced to $3,000,000.00.

On October 6, 1986, the Supreme Court of California denied petitioner's de novo request for a stay of execution and its petition for review of the October 1, 1986 order of the Court of Appeal.

Petitioner then filed an application for a stay of execution herein, contending that the October 6, 1986 order of the Supreme Court of California was unconstitutional and warranted certiorari review by this Court.

The petitioner argued that this Court would exercise certiorari jurisdiction and review the October 6th order, if petitioner were allowed to prepare and file a petition herein.

Petitioner however now urges instead, the October 1st order of the Court of Appeal as the decision warranting certiorari review.[2]

ARGUMENT

Petitioner asserts no facial constitutional challenge to the state-law standards governing an unsecured stay on appeal. Petitioner instead questions solely the Court of Appeal's *application* of those standards to the contested facts of this case. This case neither raises nor decides an important Federal issue warranting the attention of this Court.

1. California law provides that the filing of a notice of appeal from a money judgment will automatically stay execution on appeal if the appellant complies with the statutory provisions for an automatic stay. (*California Code of Civil Procedure*, Section 917.1, reprinted in Appendix A of the Petition for a Writ of Certiorari, herein).

An appellant may also obtain a stay of execution on an unsecured money judgment on appeal by applying

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[2] Petitioner also states that if the October 1, 1986 order is determined to be an exercise of discretion, then the orders of the California Superior Court should instead be reviewed by certiorari (Petition, p. 1, n.1).

directly to the Court of Appeal or the Supreme Court of the State of California (*California Code of Civil Procedure*, Section 923, reprinted in Appendix A of the Petition for a Writ of Certiorari). Unlike the stay that issues automatically upon posting of statutory bond or undertaking, the appellant here must make a showing of irreparable harm, probable merit and an absence of prejudice. (*Davis v. Custom Component Switches, Inc.*, 13 Cal. App. 3d 21 (1970).)

As petitioner itself states, under California law,

> supersedeas lies to stay execution of judgment without statutory undertaking when (a) an appellant will otherwise suffer irreparable injury and a stay is necessary to preserve the issues on appeal; (b) an appellant has a meritorious appeal; and (c) respondent will not be unduly prejudiced by the relief granted. (Pet. 7, n.7).

In the Court of Appeal, petitioner did not contend that the standards governing an unsecured stay on appeal were constitutionally infirm. To the contrary, petitioner argued that California's procedural scheme was compelled by and *consistent with* precisely the same constitutional considerations petitioner stresses before this Court. See, *e.g.*, Petition for Review and Request for Immediate Stay, at 11 (filed Oct. 2, 1986, Supreme Court of California).[3] In the state courts, petitioner contended that, on *petitioner's* view of the facts, the state-law standards entitled petitioner to the relief sought. The dispute in the state courts was solely as to the facts and not as to any issue of law.

Before this Court, petitioner does not assert a constitutional challenge to California's statutory bonding requirement or to the standards governing an unsecured

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[3] This document was previously supplied to this Court in connection with petitioner's application for a stay pending disposition of this petition.

stay on appeal.[4] As petitioner has acknowledged, petitioner's constitutional claim here "is that the California scheme *as applied* by the California courts in this case effectively den[ies] [petitioner] the means to a meaningful appeal." Petitioner's Reply Mem. to Respondent's Opposition To a Stay (Oct. 14, 1986, U.S. Supreme Court) (emphasis in original). As in the state courts, petitioner's claim turns not on any disagreement as to the governing legal principles but on the application of those principles to facts that are sharply disputed, many of which were established to the contrary of petitioner's contentions by the jury's findings. (See part 2, *infra*). Thus, at best, petitioner is situated no differently from any other party who has asserted a constitutional claim before a state trial or appellate court but has failed to make out that claim to the court's satisfaction on the *facts* of the case.[5] Accordingly, petitioner's case does not warrant plenary review by this Court.

2. The central basis for petitioner's claim to an unsecured stay or a waiver or reduction of bond in the Court of Appeal and before this Court is petitioner's claimed inability to obtain the funds necessary to post bond. As petitioner states, "[t]he essence of petitioner's argument here is its inability to post any bond beyond that of its unpledged assets." (Pet. 18, n.16). Petitioner

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[4] Indeed, petitioner's failure to make such a claim in the California courts bars petitioner from asserting it here. See, *e.g.*, *Webb v. Webb*, 451 U.S. 493 (1981); *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

[5] Indeed, it is questionable whether petitioner preserved *any federal* issue for review in this Court. Petitioner never contended directly in the California courts that the state statutory scheme, if applied to require a bond in excess of the amount petitioner asserted it could raise, would violate the United States Constitution as applied. Rather, petitioner asserted its entitlement to relief under the state-law standards, on the facts of the case. In a direct sense, the refusal of the state courts to grant such relief raises only issues concerning the application of *state* law.

has based this plea on the assertion that petitioner is a separately incorporated entity distinct from other organizations that were once part of its formal corporate structure and that petitioner's sole resources consist, accordingly, of funds held by this corporate entity as distinguished from funds held by such other organizations once owned by petitioner. This position, however, was sharply contested in the trial and before the California courts. Respondent produced evidence and contended that the record in this case makes clear that petitioner is not an independent operation by any means, and that the wall petitioner has attempted to erect between its assets and those nominally allocated elsewhere to other organizations is a sham.

It is undisputed that as of the date respondent commenced this suit, petitioner was the "Mother Church" of Scientology. See Petition for Review and Request for Immediate Stay, at 3 (filed Oct. 2, 1986, Supreme Court of California). One of petitioner's directors, Lynn Farney, testified in the trial that as the result of an extensive "corporate reorganization" that took place *subsequent to the commencement* of this lawsuit "the only thing that [now] constitute[s] the Church of Scientology of California, the only function it serve[s] [is] to house the Office of Special Affairs"—or, more formally, "the Office of Special Affairs U.S." (Tr. 14,306, 14,309-14,310).[6] This "Office," the record shows, is an arm of the successor "Mother Church," the "Church of Scientology International."

The principal if not sole functions of the California "Office," according to Mr. Farney, are to provide administrative and paralegal services in connection with lawsuits, such as this one, against the Church of Scientology —including the payment of settlements in such actions—

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[6] Portions of the Farney testimony were previously provided to the Court in connection with the Application for Stay.

and to handle "public relations." (Tr. 14,306, 14,313-14,314; Tr. Sept. 26, 1986, at 17). As the trial court stated, and as petitioner's counsel claimed before that court, the California "Office" numbers among its assets no "real estate" representing church facilities for "parishoners to have a place to pursue their religious interests," and "no religious artifacts." (Tr. Sept. 26, 1986, at 3, 5). The only assets it claims consist of "mortgages and a few accounts receivable, and . . . some gold bullion." (*Id.* at 7). As the trial court concluded, "[t]he state of the record is that the Church of Scientology of California, Inc., is a mere shell." (Tr. Sept. 26, 1986, at 3-4).

Further, the California "Office" does not provide its non-ecclesiastic functions on behalf of petitioner as an entity distinct from the Mother Church. Rather, as petitioner's counsel conceded before the trial court, the California "Office" "administ[ers] to the legal problems of the Scientologists across the country and across the world." (Tr. Sept. 26, 1986, at 11).

The record makes clear, therefore, that petitioner's ostensible, separate corporate existence is a sham. The reality is that petitioner is not an entity distinct from the larger church. Petitioner's insistence that its sole resources are those assets nominally allocated within the larger church to petitioner's separate accounts is contrary to the facts.

Petitioner made no showing that the organization *behind* its claimed shell lacks sufficient assets to meet the statutory bond requirement. Thus, petitioner simply failed to establish the essential factual predicate of its application for an unsecured stay on appeal or a reduction of bonding provisions.

3. Contrary to petitioner's assertion, *Pennzoil Company v. Texaco, Inc.*, No. 85-1798, prob. juris. noted, —— U.S. ——, 106 S. Ct. 3270 (1986), poses different issues

from the question raised in this case, and a decision in *Pennzoil* will not affect the outcome of this case.

To begin with, the threshold question in *Pennzoil* is whether a *federal* court may enjoin the application of a *state* bond requirement imposed in the course of ongoing state court proceedings. This case raises no similar issues of federal/state relations. The issue here is whether the California courts properly applied their own standards, which are indisputably constitutional, to the facts of this case.

Further, the state statute at issue in *Pennzoil* imposes "an inflexible requirement for impressment of a lien and denial of a stay of execution unless a supersedeas bond in the full amount of the judgment is posted . . . ." *Texaco, Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1154 (2d Cir. 1986). The Second Circuit found that such an "inflexible" requirement denies a fair opportunity to pursue an appeal where satisfaction of the requirement would effectively destroy the existence of the party seeking to appeal. The Second Circuit held that due process requires that a party seeking to appeal be given the opportunity to demonstrate entitlement to a stay of execution of a judgment, or to reduction of the required bond, under the following standards:

> The plaintiff has the burden of showing irreparable harm *and* (1) either probable success on the merits *or* (2) sufficiently serious questions going to the merits to make them a fair ground for litigation *plus* a balance of hardships tipping decidedly in the plaintiff's favor.

784 F.2d, at 1152.

The California procedures provide for an unsecured stay on virtually the same terms as those set down by the Second Circuit in *Pennzoil*. (See p. 4, *supra*). No party in *Pennzoil* argues that the Federal Constitution requires *more* protection than the Second Circuit pre-

scribed.[7] This Court, then, would have no occasion in *Pennzoil* to establish constitutional standards more stringent than those applied by the California courts in this case. And if this Court holds in *Pennzoil* that the Second Circuit went too far—*i.e.*, that the Constitution does not require *as much* protection—that will make no difference to this case, for petitioner has been denied relief on the facts of this case under standards virtually equivalent to the Second Circuit's. Further, regardless whether the Constitution compels state courts to grant an unsecured stay or to waive or reduce bonds when the kind of showing delineated by the Second Circuit is made, the California courts have chosen to do so as a matter of *state* law. In the instant case, petitioner simply failed to make the requisite factual showing.

The pendency of *Pennzoil* before this Court, therefore, provides no ground for granting the petition in this case. And because a decision in *Pennzoil* will not affect the outcome of this case, the petition should not be held pending the disposition of *Pennzoil*. Denying the petition outright is especially important in the circumstances of this case, moreover, because this Court has directed that enforcement of the California judgment be stayed pending the Court's disposition of the petition. In the absence of a bond protecting the judgment awarded to respondent, delay in enforcement of that judgment, occasioned by a determination by this Court to hold the petition pending a decision in *Pennzoil*, would impair not only respondent's legitimate interests but also the state's interest in enforcement of its courts' judgments.

4. Finally, petitioner's contention that this case raises issues "even more critical" than those involved in *Pennzoil* because imposition of the bond requirement here will "destroy the religious free exercise rights of

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[7] Nor does petitioner make that argument in this case.

[petitioner's] members" (Pet. 3), is factually ill-founded and disingenuous. This contention is based upon petitioner's insistence that it is unable to meet the bond requirement for an automatic stay on appeal and was therefore entitled to an unsecured stay. We have shown that petitioner failed to establish this claim factually in the courts below. Moreover, petitioner's free exercise claim is premised on mutually inconsistent propositions. As we have discussed, petitioner's claim of inability to pay is premised upon petitioner's assertion that it is a distinct corporate entity. If petitioner had been able to substantiate this assertion, petitioner could *not* at the same time maintain that the financial dissolution of petitioner would destroy the religious rights of Scientologists. This is so because, as the trial court found, the purported distinct corporate entity—the California "Office"—is "not operating *ecclesiastical* functions." (P. 7, *supra*) (emphasis added). If petitioner proposes to treat the claimed *ecclesiastical* organizations within the church and the California "Office" as a single entity for purposes of asserting claimed religious rights, then the assets of *this* overall entity—not simply of the shell constituting the California "Office"—must fairly be considered for purposes of applying the standards. Petitioner cannot have it both ways. Petitioner cannot plead poverty on the basis solely of the assets nominally assigned to the accounts of the California "Office," while at the same time asserting religious rights that can only be asserted by claimed ecclesiastical organizations of the church.

CONCLUSION

For the foregoing reasons, petitioner's request for a writ of certiorari should be denied. The case should not be held pending a decision in *Pennzoil*, as the resolution of that case will not affect the outcome in this case.

Respectfully submitted,

Of Counsel:

GEORGE H. COHEN
ROBERT M. WEINBERG
JULIA PENNY CLARK
BREDHOFF & KAISER
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

MICHAEL L. GOLDBERG
Counsel of Record
CHARLES B. O'REILLY
GREENE, O'REILLY, BROILLET,
PAUL, SIMON, MCMILLAN,
WHEELER & ROSENBERG
1000 Connecticut Ave., N.W.
Suite 1205
Washington, D.C. 20036
(202) 293-0172
Counsel for Respondent

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